



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Criminal Appeal Case No. 9/12

In the matter between

BONGANI ROY VILAKATI

Appellant

and

REX

Respondent

Neutral citation: *Bongani Roy Vilakati v Rex* (9/12) [2012] SZSC 77
(30 November 2012)

Coram: RAMODIBEDI CJ, TWUM JA and M.C.B.
MAPHALALA JA.

Heard: 5 November 2012

Delivered: 30 November 2012

Summary: Criminal Appeal and procedure; appellant convicted of murder without extenuating circumstances; application of s.15 (2) of the Constitution; appellant sentenced to life imprisonment. Sentence set aside and substituted with 18 years imprisonment.

TWUM J.A.

- [1] On or about 2nd January 2008, the appellant unlawfully and intentionally killed one Mbongiseni Dlamini by shooting him at close range, with a gun.
- [2] In his confession statement made before a Judicial Officer, the appellant admitted the offence and explained that the deceased, a taxi driver, who used to transport his dagga for him wilfully failed to deliver one consignment of dagga worth some E36,000.00 so he set up an ambush at a predetermined lonely location and killed him. The appellant added that he earned a living through building houses and cultivating dagga for sale.
- [3] The appellant was arraigned before the High Court. He pleaded not guilty and the prosecution called some 11 or so witnesses in proof of its case against the appellant. From his own evidence, it emerged that the appellant's motive for killing the deceased was that the deceased made away with his dagga and sold it for his own benefit.
- [4] On 4th July 2011, after carefully sifting the totality of the evidence, the trial court found the appellant guilty and convicted him of the offence of murder without extenuating circumstances.

[5] In a very long, rambling and convoluted submission, defence counsel sought to exonerate the appellant from blame by saying that the appellant was devastated by the loss of some E36, 000.00 worth of dagga. He further submitted that the court a quo should not impose a sentence of death since such sentence was a cruel and inhuman or degrading treatment.

[6] The court a quo examined the law on sentencing in the light of section 15 (2) of the Constitution which provides that the death penalty shall not be mandatory. Not unnaturally, however, it rejected defence counsel's submission that the accused was somehow justified in killing the deceased "because of an illegal deal which had gone wrong." The court pointed out that the murder of the deceased was in cold blood and that the appellant did not show any remorse thereafter. Indeed, after the killing he took the deceased's taxi and used it. The appellant was sentenced to life imprisonment back-dated to 7th January 2008, the date on which he was arrested and detained pending the completion of his trial.

[7] Now, under section 15 (3) of the Constitution, a sentence of life imprisonment should not be less than 25 years. In the circumstances, the appellant was rightly advised that he was sentenced to 25 years in prison.

The appeal

- [8] On 16th January 2012, the appellant purported to appeal for suspension of 10 years of his 25 years sentence, on the ground that it was too harsh and severe for him to bear.
- [10] Under section 313 of the Criminal Procedure and Evidence Act, no part of a sentence for murder may be suspended. However, on 25th October 2012, the appellant filed so-called Heads of Argument in which he prayed for suspension/reduction in the sentence. He said he was a first offender and that he was a sole breadwinner in his family. He said he had four minor children to provide for and pay their school fees.
- [11] I have said elsewhere that these passionate appeals from prisons for reduction in sentence not based on proven facts only yield nominal dividends. These matters should have been given during the trial for the prosecutions to check their truth. That notwithstanding, I have given the sentence a dispassionate consideration and I have come to the conclusion that some reduction is called for notwithstanding the seriousness of the crime. In the circumstances, I will set aside the sentence of life imprisonment and in its place substitute a sentence of 18 years in prison, back-dated to 7th January, 2008.

**DR. SETH TWUM
JUSTICE OF APPEAL**

I agree.

**M.M. RAMODIBEDI
CHIEF JUSTICE**

I also agree.

**MAPHALALA M.C.B
JUSTICE OF APPEAL**

COUNSEL:

For Appellant:

Mr. Magongo

For Respondents:

Mduduzi Mathunjwa